

## Don't be Surprised: Risk can be Managed

*The heart of risk management beats with three C's: Commitment, Communication, and Consistency, added to the Care and Compassion of volunteer work. If you commit to protecting the community you serve, communicate that commitment to everyone in your organization, and consistently act in accord with that commitment, you will enjoy the benefits of risk management.*

*Charles Tremper & Gwynne Kostin*

What exactly is risk management? Is it merely looking for possible risk and then purchasing insurance in case a problem rears its ugly head? According to Tremper & Kostin,<sup>4</sup> risk management is actually a process which provides a method of responding to possible risks within an organization's scope of operations. They have outlined this process in five steps that form the basis for risk management in any organization.

### The Risk Management Process

- |        |                                              |
|--------|----------------------------------------------|
| Step 1 | Look for risks                               |
| Step 2 | Assess your risks                            |
| Step 3 | Decide how to control your risks             |
| Step 4 | Implement your strategy                      |
| Step 5 | Review and revise periodically and as needed |

It is not uncommon for boards to consider risk management in terms of insurance needs only. This approach is limited as it only addresses one aspect of risk—liability. The more ideal way to approach risk management is to view it as an entire system of ways of dealing with risks, of which insurance is only one component. The

Nonprofit Risk Management Center recommends evaluating each potential risk according to a four-step measure: avoid, prevent/reduce, transfer, or retain risks. Through evaluating each risk, you will be better prepared if a problem occurs.

## **AVOIDANCE**

Avoid unnecessary risks by not undertaking high-risk activities or eliminating certain programs. As you assess your risk you may not want to offer a service that you consider too risky. For example, if the program or service involves many volunteers placed in a potentially risky position, reconsider offering that service. This often means weighing the risks compared to the positive results of the program or service. Consider eliminating programs or services not closely tied to your mission. Some examples of this would be: not transporting children to and from a performance, not having a water dunking machine at a fund raising carnival or not giving a party with alcohol where someone could drink too much and have an accident when they leave.

## **PREVENTION/RISK REDUCTION**

Change the activity so that the chance of any harm occurring and the impact of the potential damage are involvement in the risk assessment process. (See assessment form on page 20)

**TRANSFER** acceptable. Prevention would include implementing policies such as two signatures on all checks, good volunteer screening policy, and board

Delegate activities or any inherent financial risks to an outside source. Examples of this type of risk management include retaining an accounting service to administer payroll, hiring a bus company to transport students instead of having a volunteer or staff member do the driving, and/or purchasing insurance, thereby transferring a portion of the financial risk to an insurance company.

## **RETAIN**

Whatever risks you retain, you must be prepared if a problem arises, either by having insurance or a hefty savings bank account. Unfortunately, organizations most often retain risks by not thinking about them. CHOOSE to retain only small, manageable risks.

## **MORE ABOUT INSURANCE**

Volunteer liability not only includes liability *to* volunteers but also liability caused *by* volunteers. Both of these liabilities need to be considered by your insurance agency.

Insurance and risk management are related but not the same thing. Risk management is a way of preventing the reason for needing insurance.

Remember when it comes to finding insurance:

- ▶ Nothing can compensate for the strain put on the good name of the organization or time lost in dealing with a lawsuit.
- ▶ Insurance policies have exclusions...read them to make sure that they cover your organizational needs.
- ▶ Liability policies for volunteer organizations should rarely be bought off-the-shelf because they are usually not specific enough to cover the unique risk needs of an organization these needs should be determined by a thorough assessment. Not all insurance agents understand nonprofit problems.

**Sources of claims against nonprofits:**

- Wrongful termination (60%)
- Sexual harassment (17%)
- Discrimination (10%)
- Breach of fiduciary duty (10%)
- Invasion of privacy (3%)

Some of the basic types of insurance include:

Comprehensive General Liability (CGL): Protects against claims alleging property damage or bodily injury caused by the nonprofit's operations or activities. This is a broader coverage

and excludes things more appropriately covered by a specific policy. Some general liability carriers will extend their policy to cover the volunteers as insured, usually in the form of a volunteer policy rider.

Director and Officer: Protects against claims alleging harm attributable to the government or management of an organization.

Automobile: Covers a vehicle whether the automobile is agency or non-agency owned. Pays to hire a lawyer and protect against a claim, pays settlement up to policy limit.

Professional Liability: Claims from failure to render professional services--malpractice insurance.

Umbrella & Excess: Covers where original policies leave off— i.e., from \$500,000 to \$1,000,000.

Worker's Compensation: Ask your agent if this can cover volunteers. This usually covers hospital and doctor bills, lost wages, disability, burial expenses and death benefits.

Volunteer insurance: General liability policies generally cover claims made against the organization because of a volunteer's actions. A policy will only cover claims against a volunteer personally if the policy specifically includes volunteers.

Utah Volunteer Immunity Laws: See Utah Code Annotated §§ 78-19-1 to 3.

## SCREENING

One of the most obvious methods of risk prevention is volunteer screening. Many nonprofits are so desperate for volunteers that they will literally accept anyone to fill a much needed position. Others are afraid that extensive screening will scare away good volunteers. Good communication is the key. If you communicate your organization's concern that the mission is carried out properly and the constituency served best, most potential volunteers will be open to a screening process. It is important that the screening method is a standard written procedure and part of the organization's policy. This can not only be used to protect the organization in response to litigation, but it also communicates a fair process to the potential volunteer.

### SCREENING GUIDELINES

- Your position description should be the guide to develop screening procedures. Screening should be appropriate to the volunteer's duties, i.e. Do you need to fingerprint someone who takes tickets?
- Always consider and be sensitive to an applicant's cultural differences. Don't make assumptions based upon your own perceptions. Let the data help you make a judgment.
- Ask the applicant to explain anything that doesn't seem right.
- Gather your data from multiple sources but don't ask for information that is unnecessary or difficult to evaluate.
- Be reasonable. Use the level of responsibility or vulnerability of the position to determine the thoroughness of your screening. For example, if the volunteer will be working with children, you may want to call more references than if they are going to be doing paperwork and filing.
- If possible, invite others to sit in on the interview and screening process to add another set of ears and eyes. However, be sensitive to privacy issues.
- Be consistent. Every volunteer should be screened according to the position and the overall policies in place.

Another important aspect of screening is to build in a multi-layered process. Doing this will reveal inconsistent responses and alert you to any untruths. Also, if the process is thorough, it may discourage potential volunteers who are hiding something.

**DON'T QUIT AT AN INITIAL SCREENING!** Experience and research with child abusers revealed that many were amazed at how readily they were placed and how little they were supervised as they carried out their volunteer work while sexually abusing children.<sup>5</sup> **ONGOING TRAINING, SUPERVISION AND EVALUATION OF RISK IS A MUST!**

At the end of this chapter is a risk assessment form. Use this form to assess your organization's possible risks and to decide as a board, the action you will take to control that risk. The action may be as simple as adding a new policy to your bylaws or as intricate as forming a collaboration with another organization in order to transfer the risk to an organization with policy already in place to handle the risk.

The following references are listed to assist you with more detailed information about nonprofit risk management. Many of these organizations have free or low cost publications you can order. Take advantage of their expertise!

**Nonprofit Risk Management Center**

Washington, DC 20036  
(202) 785-3891

**Utah Nonprofits Association**

175 S Main Street, Suite 750  
Salt Lake City, UT 84111  
(801)596-1800  
[www.utahnonprofits.org](http://www.utahnonprofits.org)

**National Safety Council**

444 N. Michigan Avenue  
Chicago, IL 60611  
(312) 527-4800

**Americans With Disabilities Act**

Department of Justice  
(202) 514-0301  
Equal Employment Opportunity Commission  
(800) 669-EEOC

**Points of Light Foundation**

1737 H. Street, NW  
Washington, D.C. 20006  
(202) 223-9186

**National Council of Nonprofit Associations**

1001 Connecticut Ave., NW, Ste. 900  
Washington, DC 20036  
(202) 785-3208

## What to do When the Worst Case Scenario Happens

Tremper & Kostin also give some sound advice in their publication *No Surprises* about accepting a degree of uncertainty while adopting a risk management mindset. Think for a minute about the possibility of an accident or a crisis occurring within the scope of operations of your organization.

- ▶ A senior citizen falls down the steps at one of your performances
- ▶ A board member is indicted for embezzlement
- ▶ A volunteer artist abuses one of the children at a school residency
- ▶ A truck accidentally kills a volunteer while working for your organization

## Prepare for the worst

Most incidents that could result in a lawsuit do not go that far. What you do following an incident can prevent the chance of a lawsuit, as well as the bad publicity it would bring. Because a claim may be filed, however, prepare to take the necessary steps for legal and insurance protections.

- **Make sure volunteers and employees know what to do.** Everyone should understand and follow procedures to respond to and report an accident or crisis.
- **Express concern for the injured person.** Help the person obtain necessary treatment; provide care, if you are able, without admitting or implying liability. People are less likely to sue if treated well after an accident.
- **Do not admit liability!** Even if liability is obvious, the rules of law could produce a different result. Try not to say anything about why you think the incident occurred. Beware of “implicit admissions.” Unless immediate changes are necessary to protect public safety, do not modify conditions that caused the incident until you have conferred with counsel.

### Four Quick Rules for Media Relations

1. Designate a media spokesperson and an alternate.
2. Don't lie. Either tell the truth or say nothing. If you don't know, say so. Offer to look into the matter and respond later.
3. Never say something to a reporter you don't want in print or on TV, even “off the record.”
4. Release only confirmed facts. Don't speculate.

- **Keep the lines of communication open.** People who don't get prompt answers to their questions may assume the worst. If they feel like they are getting the run around, they are more likely to hire a lawyer to get answers for them.
- **Be prepared to deal with the media.** Prepare statements to present your organization in the best light.
- **Identify witnesses and carefully preserve physical evidence.** Get pictures of the scene, if possible and appropriate. Write down witnesses' names and other necessary information.
- **Record your recollection** of the incident and encourage others involved in the incident to do the same as soon as possible. Memory diminishes quickly.
- **Do not talk about the incident** without consulting a lawyer. Anyone you talk to may be subpoenaed.
- **Prevent a recurrence.** Make changes to increase safety. If appropriate, temporarily suspend the assignment of any volunteer(s) or employee(s) responsible for the incident. A policy on suspension will protect clients, the organization, and the accused.
- **Support the people affected by the incident.** The distress of people involved in an incident is often made worse by isolation. Extra support may be needed to maintain morale.

The key to handling an emergency effectively is to prepare in advance. Only by acknowledging a risk can you begin to think about how everyone should respond if something goes wrong. Risk management gives you the control you need to handle even your worst case scenario.<sup>6</sup>

## RISK ASSESSMENT FORM

ACTIVITY AFTER SCHOOL ART CAMP

### RISK

1. Contact sports could cause injury
2. students will be let out after dark in the winter
3. some activities call for transportation to museums, etc.

ACTION: (i.e., avoid, prevent/reduce, transfer, retain)

1. **AVOID** any contact activities even if tied to theater production
2. **PREVENT** Have parents pick up students inside the building—keep a roster of parents or give password
3. **TRANSFER** see if school will provide bus/insurance Include extra \$s in budget

ACTIVITY CHOIR GROUP TRAVEL

### RISK

1. travel by various modes—not all travel together
2. money collected at concerts handled by one person
3. copyright or permission on music isn't always procured

ACTION: (i.e., avoid, prevent/reduce, transfer, retain)

1. **TRANSFER** have each choir member secure own insurance depending on mode of travel
2. **PREVENT/REDUCE** set up system where more than one person checks/counts/deposits \$s
3. **RETAIN** assign a board member to be in charge of securing permission and/or copyright and report back to board

ACTIVITY THEATRE PRODUCTION IN THE PARK (CITY OWNED)

### RISK

1. stage may be too small for all—could step and fall off
2. often rains and electrical equipment is out in the open
3. seating only allows one entrance—could cause exit problems

### ACTION

1. **PREVENT/REDUCE** limit participants/actors in the play to a safe number
2. **TRANSFER** ask city council for \$s to have booth built next to stage to put electrical cords.
3. **PREVENT/RETAIN** retain risk but prevent by announcing to audience where exit is and that it is the only one



## RISK ASSESSMENT FORM

ACTIVITY \_\_\_\_\_

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ACTIVITY \_\_\_\_\_

### RISK

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ACTIVITY \_\_\_\_\_

### RISK

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### ACTION: (i.e., avoid, prevent/reduce, transfer, retain)

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